

House File 777 - Introduced

HOUSE FILE _____
BY COMMITTEE ON STATE GOVERNMENT

(SUCCESSOR TO HSB 234)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to open records and public meetings, including
2 creation of the Iowa public information board, and providing
3 an effective date and making an appropriation.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 2139HV 83
6 rh/rj/14

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1 1 Section 1. Section 8A.341, subsection 2, Code 2009, is
1 2 amended to read as follows:
1 3 2. If money is appropriated for this purpose, by November
1 4 1 of each year supply a report which contains the name,
1 5 gender, county, or city of residence when possible, official
1 6 title, salary received during the previous fiscal year, base
1 7 salary as computed on July 1 of the current fiscal year, and
1 8 traveling and subsistence expense of the personnel of each of
1 9 the departments, boards, and commissions of the state
1 10 government except personnel who receive an annual salary of
1 11 less than one thousand dollars. The number of the personnel
1 12 and the total amount received by them shall be shown for each
1 13 department in the report. All employees who have drawn
1 14 salaries, fees, or expense allowances from more than one
1 15 department or subdivision shall be listed separately under the
1 16 proper departmental heading. On the request of the director,
1 17 the head of each department, board, or commission shall
1 18 furnish the data covering that agency. The report shall be
1 19 distributed upon request without charge in an electronic
1 20 medium to each caucus of the general assembly, the legislative
1 21 services agency, the chief clerk of the house of
1 22 representatives, and the secretary of the senate. Copies of
1 23 the report shall be made available to other persons in an
1 24 electronic medium upon payment of a fee, which shall not
1 25 exceed the cost of providing the copy of the report. Sections
1 26 22.2 through ~~22.6~~ 22.5 apply to the report. All funds from
1 27 the sale of the report shall be deposited in the printing
1 28 revolving fund established in section 8A.345.

1 29 Sec. 2. Section 8E.202, subsection 1, unnumbered paragraph
1 30 1, Code 2009, is amended to read as follows:

1 31 The department and each agency shall provide for the widest
1 32 possible dissemination of information between agencies and the
1 33 public relating to the enterprise strategic plan and agency
1 34 strategic plans, including but not limited to internet access.
1 35 This section does not require the department or an agency to
2 1 release information which is classified as a confidential
2 2 record under this Code, ~~including but not limited to section~~
~~2 3 22.7.~~

2 4 Sec. 3. Section 8E.202, subsection 3, Code 2009, is
2 5 amended to read as follows:

2 6 3. A record which is confidential under this Code ~~-~~
~~2 7 including but not limited to section 22.7,~~ shall not be
2 8 released to the public under this section.

2 9 Sec. 4. Section 21.2, subsection 1, Code 2009, is amended
2 10 by adding the following new paragraph:

2 11 NEW PARAGRAPH. i. An entity eligible to exercise
2 12 tax-exempt bonding authority under chapter 7C, including a
2 13 nonprofit tax-exempt bonding authority under chapter 7C
2 14 designated by the state to serve as a secondary market for
2 15 student loans and a nonprofit tax-exempt bonding authority
2 16 under chapter 7C whose board of directors is appointed by the
2 17 governor.

2 18 Sec. 5. Section 21.4, subsections 1 and 3, Code 2009, are
2 19 amended to read as follows:

2 20 1. ~~A Except as provided in subsection 3, a governmental~~
2 21 ~~body, except township trustees,~~ shall give notice of the time,
2 22 date, and place of each meeting including a reconvened meeting
2 23 of the governmental body, and its tentative agenda of the
2 24 meeting, in a manner reasonably calculated to apprise the
2 25 public of that information. Reasonable notice shall include
2 26 advising the news media who have filed a request for notice
2 27 with the governmental body and posting the notice on a
2 28 bulletin board or other prominent place which is easily
2 29 accessible to the public and clearly designated for that
2 30 purpose at the principal office of the body holding the
2 31 meeting, or if no such office exists, at the building in which
2 32 the meeting is to be held.

2 33 3. Subsection 1 does not apply to any of the following:

2 34 a. A meeting reconvened within four hours of the start of
2 35 its recess, where an announcement of the time, date, and place
3 1 of the reconvened meeting is made at the original meeting in
3 2 an open session and recorded in the minutes of the meeting and
3 3 there is no change in the agenda.

3 4 b. A meeting held by a formally constituted subunit of a
3 5 parent governmental body may conduct a meeting without notice
3 6 as required by this section during a lawful meeting of the
3 7 parent governmental body, or during a recess in that meeting
3 8 of up to four hours, or a meeting of that subunit immediately
3 9 following that the meeting of the parent governmental body, if
3 10 the meeting of the that subunit is publicly announced in open
3 11 session at the parent meeting and the subject of the meeting
3 12 reasonably coincides with the subjects discussed or acted upon
3 13 by the parent governmental body.

3 14 Sec. 6. Section 21.5, subsection 1, paragraph j, Code
3 15 2009, is amended to read as follows:

3 16 j. To discuss the purchase of particular real estate only
3 17 where premature disclosure could be reasonably expected to
3 18 increase the price the governmental body would have to pay for
3 19 that property. The minutes and the ~~tape audio~~ recording of a
3 20 session closed under this paragraph shall be available for
3 21 public examination when the transaction discussed is
3 22 completed.

3 23 Sec. 7. Section 21.5, subsection 4, Code 2009, is amended
3 24 to read as follows:

3 25 4. A governmental body shall keep detailed minutes of all
3 26 discussion, persons present, and action occurring at a closed
3 27 session, and shall also ~~tape audio~~ record all of the closed
3 28 session. The detailed minutes and ~~tape audio~~ recording of a
3 29 closed session shall be sealed and shall not be public records
3 30 open to public inspection. However, upon order of the court
3 31 in an action to enforce this chapter, the detailed minutes and
3 32 ~~tape audio~~ recording shall be unsealed and examined by the
3 33 court in camera. The court shall then determine what part, if
3 34 any, of the minutes should be disclosed to the party seeking
3 35 enforcement of this chapter for use in that enforcement
4 1 proceeding. In determining whether any portion of the minutes
4 2 or recording shall be disclosed to such a party for this
4 3 purpose, the court shall weigh the prejudicial effects to the
4 4 public interest of the disclosure of any portion of the
4 5 minutes or recording in question, against its probative value
4 6 as evidence in an enforcement proceeding. After such a
4 7 determination, the court may permit inspection and use of all
4 8 or portions of the detailed minutes and ~~tape audio~~ recording
4 9 by the party seeking enforcement of this chapter. A
4 10 governmental body shall keep the detailed minutes and ~~tape~~
4 11 ~~audio~~ recording of any closed session for a period of at least
4 12 one year from the date of that meeting, except as otherwise
4 13 required by law.

4 14 Sec. 8. Section 21.6, subsection 3, paragraph a, Code
4 15 2009, is amended to read as follows:

4 16 a. Shall assess each member of the governmental body who
4 17 participated in its violation damages in the amount of not
4 18 more than five hundred dollars ~~nor and not~~ less than one
4 19 hundred dollars. However, if a member of a governmental body
4 20 knowingly participated in such a violation, damages shall be
4 21 in the amount of not more than two thousand five hundred
4 22 dollars and not less than one thousand dollars. These damages
4 23 shall be paid by the court imposing it to the state of Iowa,
4 24 if the body in question is a state governmental body, or to
4 25 the local government involved if the body in question is a
4 26 local governmental body. A member of a governmental body
4 27 found to have violated this chapter shall not be assessed such
4 28 damages if that member proves that the member did any of the

4 29 following:

4 30 (1) Voted against the closed session.

4 31 (2) Had good reason to believe and in good faith believed
4 32 facts which, if true, would have indicated compliance with all
4 33 the requirements of this chapter.

4 34 (3) Reasonably relied upon a decision of a court, ~~or a~~
4 35 formal opinion of the Iowa public information board, the
5 1 attorney general, or the attorney for the governmental body,
5 2 given in writing, or as memorialized in the minutes of the
5 3 meeting at which a formal oral opinion was given, or an
5 4 advisory opinion of the Iowa public information board, the
5 5 attorney general, or the attorney for the governmental body,
5 6 given in writing.

5 7 Sec. 9. Section 21.6, subsection 3, paragraph d, Code
5 8 2009, is amended to read as follows:

5 9 d. Shall issue an order removing a member of a
5 10 governmental body from office if that member has engaged in a
5 11 prior violation of this chapter for which damages were
5 12 assessed against the member during the member's term. In
5 13 making this determination, the court shall recognize
5 14 violations for which damages were assessed by the Iowa public
5 15 information board created in section 23.3.

5 16 Sec. 10. NEW SECTION. 22.0A PURPOSE.

5 17 The purpose of this chapter is to provide as much
5 18 transparency in government operations as possible consistent
5 19 with the need to avoid undue invasions of personal privacy and
5 20 the need to avoid significant interference with the
5 21 achievement of other important and legitimate state
5 22 objectives.

5 23 Sec. 11. Section 22.1, subsection 1, Code 2009, is amended
5 24 to read as follows:

5 25 1. The term "government body" means this state, or any
5 26 county, city, township, school corporation, political
5 27 subdivision, tax-supported district, nonprofit corporation
5 28 other than a fair conducting a fair event as provided in
5 29 chapter 174, whose facilities or indebtedness are supported in
5 30 whole or in part with property tax revenue and which is
5 31 licensed to conduct pari-mutuel wagering pursuant to chapter
5 32 99D, an entity eligible to exercise tax-exempt bonding
5 33 authority under chapter 7C, including a nonprofit tax-exempt
5 34 bonding authority under chapter 7C designated by the state to
5 35 serve as a secondary market for student loans and a nonprofit
6 1 tax-exempt bonding authority under chapter 7C whose board of
6 2 directors is appointed by the governor, or other entity of
6 3 this state, or any branch, department, board, bureau,
6 4 commission, council, committee, official, or officer of any of
6 5 the foregoing or any employee delegated the responsibility for
6 6 implementing the requirements of this chapter.

6 7 Sec. 12. NEW SECTION. 22.2A RECORD REQUESTS == TIME
6 8 LIMITS.

6 9 1. Upon receipt of an oral or written request to examine
6 10 or copy a public record, the lawful custodian shall, if
6 11 feasible in the ordinary course of business, permit such
6 12 examination or copying at the time of the request. If it is
6 13 not feasible in the ordinary course of business to permit
6 14 examination or copying of the public record at the time of the
6 15 request, the lawful custodian shall immediately notify the
6 16 requester, orally or in writing, when such examination or
6 17 copying may take place, which shall be no later than five
6 18 business days from the time of the request unless there is
6 19 good cause for further delay. If further delay is necessary
6 20 because of good cause in responding to a request to examine or
6 21 copy a record the lawful custodian knows is a public record,
6 22 the lawful custodian shall provide the requester with a
6 23 written statement detailing the reason or reasons for the
6 24 delay and the date by which the request will be satisfied.

6 25 2. If the lawful custodian is in doubt as to whether the
6 26 record requested is a public record or whether the requester
6 27 should be permitted to examine or copy an optional public
6 28 record specified in section 22.7, the lawful custodian shall
6 29 make that determination within ten business days from the date
6 30 of the request unless further delay is necessary because of a
6 31 pending request by the lawful custodian to the Iowa public
6 32 information board for an opinion regarding the status of the
6 33 record requested, or other good cause, which is communicated
6 34 in writing to the requester. Examination or copying of the
6 35 government record shall be allowed within five business days
7 1 from the date the lawful custodian makes the decision in such
7 2 circumstances to permit examination or copying of the record
7 3 unless there is good cause for further delay in fulfilling the
7 4 request as provided in subsection 1.

7 5 3. If the lawful custodian denies a request to examine or
7 6 copy a public record, the custodian must provide the requester
7 7 at the time of the denial a written statement denying the
7 8 request and detailing the specific reason or reasons for the
7 9 denial.

7 10 4. If the lawful custodian does not fulfill a request to
7 11 examine or copy a public record within the times prescribed in
7 12 this section, the request shall be deemed denied and the
7 13 requester shall be entitled to file a complaint with the Iowa
7 14 public information board pursuant to section 23.7 or file a
7 15 lawsuit against the lawful custodian pursuant to section
7 16 22.10.

7 17 Sec. 13. Section 22.7, subsection 7, Code 2009, is amended
7 18 to read as follows:

7 19 7. Appraisals or appraisal information concerning the
7 20 purchase of real or personal property for public purposes,
7 21 prior to ~~public announcement of a project~~ the submission of
7 22 the appraisal to the property owner or other interest holders
7 23 as provided in section 6B.45.

7 24 Sec. 14. Section 22.7, subsection 10, Code 2009, is
7 25 amended by striking the subsection.

7 26 Sec. 15. Section 22.7, subsection 11, Code 2009, is
7 27 amended to read as follows:

7 28 11. a. Personal information in confidential personnel
7 29 records of public government bodies including but not limited
7 30 to cities, boards of supervisors and school districts relating
7 31 to identified or identifiable individuals who are officials,
7 32 officers, or employees of the government bodies. However, the
7 33 following information relating to such individuals contained
7 34 in personnel records shall be public records:

7 35 (1) The name and compensation of the individual including
8 1 any written agreement establishing compensation or any other
8 2 terms of employment excluding any information otherwise
8 3 excludable from public information pursuant to this section or
8 4 any other applicable provision of law. For purposes of this
8 5 paragraph, "compensation" means payment of, or agreement to
8 6 pay, any money, thing of value, or financial benefit conferred
8 7 in return for labor or services rendered by an officer,
8 8 employee, or other person plus the value of benefits including
8 9 but not limited to casualty, disability, life, or health
8 10 insurance, other health or wellness benefits, vacation,
8 11 holiday, and sick leave, severance payments, retirement
8 12 benefits, and deferred compensation.

8 13 (2) The date the individual was employed by the government
8 14 body.

8 15 (3) The positions the individual holds or has held with
8 16 the government body.

8 17 (4) The educational institutions attended by the
8 18 individual, including any diplomas and degrees earned, and the
8 19 names of the individual's previous employers, positions
8 20 previously held, and dates of previous employment.

8 21 (5) Any final disciplinary action taken against the
8 22 individual that resulted in the individual's discharge.

8 23 b. Personal information in confidential personnel records
8 24 of government bodies relating to student employees shall only
8 25 be released pursuant to 20 U.S.C. } 1232g.

8 26 Sec. 16. Section 22.7, subsection 18, Code 2009, is
8 27 amended to read as follows:

8 28 18. a. Communications not required by law, rule,
8 29 procedure, or contract that are made to a government body or
8 30 to any of its employees by identified persons outside of
8 31 government, to the extent that the government body receiving
8 32 those communications from such persons outside of government
8 33 could reasonably believe that those persons would be
8 34 discouraged from making them to that government body if they
8 35 were available for general public examination. As used in
9 1 this subsection, "persons outside of government" does not
9 2 include persons or employees of persons who are communicating
9 3 with respect to a consulting or contractual relationship with
9 4 a government body or who are communicating with a government
9 5 body with whom an arrangement for compensation exists.
9 6 Notwithstanding this provision:

9 7 a- (1) The communication is a public record to the extent
9 8 that the person outside of government making that
9 9 communication consents to its treatment as a public record.

9 10 b- (2) Information contained in the communication is a
9 11 public record to the extent that it can be disclosed without
9 12 directly or indirectly indicating the identity of the person
9 13 outside of government making it or enabling others to
9 14 ascertain the identity of that person.

9 15 c- (3) Information contained in the communication is a

9 16 public record to the extent that it indicates the date, time,
9 17 specific location, and immediate facts and circumstances
9 18 surrounding the occurrence of a crime or other illegal act,
9 19 except to the extent that its disclosure would plainly and
9 20 seriously jeopardize a continuing investigation or pose a
9 21 clear and present danger to the safety of any person. In any
9 22 action challenging the failure of the lawful custodian to
9 23 disclose any particular information of the kind enumerated in
9 24 this paragraph, the burden of proof is on the lawful custodian
9 25 to demonstrate that the disclosure of that information would
9 26 jeopardize such an investigation or would pose such a clear
9 27 and present danger.

9 28 b. This subsection does not apply to information relating
9 29 to applications to a government body for employment.

9 30 Sec. 17. Section 22.7, subsections 40, 43, and 48, Code
9 31 2009, are amended to read as follows:

9 32 40. The portion of a record request that contains an
9 33 internet protocol number ~~which identifies the computer from~~
~~9 34 which a person requests a record, whether the person using~~
~~9 35 such computer makes the request through the IowAccess network~~
~~10 1 or directly to a lawful custodian. However, such record may~~
~~10 2 be released with the express written consent of the person~~
~~10 3 requesting the record.~~

10 4 43. Information obtained by the commissioner of insurance
10 5 pursuant to section 502.607, subsection 2.

~~10 6 48. Sex offender registry records under chapter 692A-~~
~~10 7 except shall only be released as provided in section 692A.13.~~

10 8 Sec. 18. Section 22.7, subsection 52, paragraphs a and c,
10 9 Code 2009, are amended to read as follows:

10 10 a. The following records relating to a charitable donation
~~10 11 made to a foundation acting solely for the support of an~~
~~10 12 institution governed by the state board of regents, to a~~
~~10 13 foundation acting solely for the support of an institution~~
~~10 14 governed by chapter 260C, to a private foundation as defined~~
~~10 15 in section 509 of the Internal Revenue Code organized for the~~
~~10 16 support of a government body, or to an endow Iowa qualified~~
~~10 17 community foundation, as defined in section 15E.303, organized~~
~~10 18 for the support of a government body:~~

10 19 (1) Portions of records that disclose a donor's or
10 20 prospective donor's personal, financial, estate planning, or
10 21 gift planning matters.

10 22 (2) Records received from a donor or prospective donor
10 23 regarding such donor's prospective gift or pledge.

10 24 (3) Records containing information about a donor or a
10 25 prospective donor in regard to the appropriateness of the
10 26 solicitation and dollar amount of the gift or pledge.

10 27 (4) Portions of records that identify a prospective donor
10 28 and that provide information on the appropriateness of the
10 29 solicitation, the form of the gift or dollar amount requested
10 30 by the solicitor, and the name of the solicitor.

10 31 (5) Portions of records disclosing the identity of a donor
10 32 or prospective donor, including the specific form of gift or
10 33 pledge that could identify a donor or prospective donor,
10 34 directly or indirectly, when such donor has requested
10 35 anonymity in connection with the gift or pledge. This
11 1 subparagraph does not apply to a gift or pledge from a
11 2 publicly held business corporation.

11 3 c. Except as provided in paragraphs "a" and "b", portions
11 4 of records relating to the receipt, holding, and disbursement
11 5 of gifts made for the benefit of regents institutions and made
11 6 through foundations established for support of regents
11 7 institutions, including but not limited to written
11 8 fund-raising policies and documents evidencing fund-raising
11 9 practices, shall be subject to this chapter. Unless otherwise
11 10 provided, the lawful custodian of all records subject to this
11 11 paragraph is the regents institution to be benefited by such
11 12 gifts.

11 13 Sec. 19. Section 22.7, subsection 55, Code 2009, is
11 14 amended to read as follows:

11 15 55. An intelligence assessment and intelligence data under
11 16 chapter 692, except shall only be released as provided in
11 17 section 692.8A.

11 18 Sec. 20. Section 22.7, Code 2009, is amended by adding the
11 19 following new subsection:

11 20 NEW SUBSECTION. 62. PUBLIC EMPLOYMENT APPLICATIONS.

11 21 a. The identity and qualifications of an applicant for
11 22 employment by a government body if the applicant requests
11 23 anonymity in writing and the government body determines that
11 24 anonymity is necessary to induce the applicant to apply for
11 25 the employment position. Such information shall be exempt
11 26 from disclosure until an applicant is considered by the

11 27 government body to be a finalist for the position. For
11 28 purposes of this subsection, "finalist" means any applicant
11 29 who is determined to be among those who are under final
11 30 consideration for the position, and at least includes the five
11 31 most qualified applicants as determined by the recommending or
11 32 selecting authority. If there are five or fewer applicants
11 33 for the particular position, all of the applicants shall be
11 34 considered finalists for purposes of this subsection. The
11 35 identities and qualifications of the finalists shall be made
12 1 available for public inspection at least three business days
12 2 prior to a final decision.

12 3 b. Documents relating to a government body's evaluation of
12 4 the qualifications and merits of an applicant for employment
12 5 by that government body.

12 6 Sec. 21. Section 22.10, subsection 3, paragraph b, Code
12 7 2009, is amended to read as follows:

12 8 b. Shall assess the persons who participated in its
12 9 violation damages in the amount of not more than five hundred
12 10 dollars ~~nor and not~~ less than one hundred dollars. However,

12 11 if a member of a government body knowingly participated in
12 12 such a violation, damages shall be in the amount of not more
12 13 than two thousand five hundred dollars and not less than one
12 14 thousand dollars. These damages shall be paid by the court

12 15 imposing them to the state of Iowa if the body in question is
12 16 a state government body, or to the local government involved
12 17 if the body in question is a local government body. A person
12 18 found to have violated this chapter shall not be assessed such
12 19 damages if that person proves that the person ~~either voted did~~
12 20 any of the following:

12 21 (1) Voted against the action violating this chapter,
12 22 refused to participate in the action violating this chapter,
12 23 or engaged in reasonable efforts under the circumstances to
12 24 resist or prevent the action in violation of this chapter~~+~~
12 25 had.

12 26 (2) Had good reason to believe and in good faith believed
12 27 facts which, if true, would have indicated compliance with the
12 28 requirements of this chapter~~+~~ or reasonably.

12 29 (3) Reasonably relied upon a decision of a court ~~or an, a~~
12 30 formal opinion of the Iowa public information board, the
12 31 attorney general, or the attorney for the government body,
12 32 given in writing, or as memorialized in the minutes of the
12 33 meeting at which a formal oral opinion was given, or an
12 34 advisory opinion of the Iowa public information board, the
12 35 attorney general, or the attorney for the government body,
13 1 given in writing.

13 2 Sec. 22. Section 22.10, subsection 3, paragraph d, Code
13 3 2009, is amended to read as follows:

13 4 d. Shall issue an order removing a person from office if
13 5 that person has engaged in a prior violation of this chapter
13 6 for which damages were assessed against the person during the
13 7 person's term. In making this determination, the court shall
13 8 recognize violations for which damages were assessed by the
13 9 Iowa public information board created in section 23.3.

13 10 Sec. 23. Section 22.10, subsection 5, Code 2009, is
13 11 amended by striking the subsection.

13 12 Sec. 24. Section 22.13, Code 2009, is amended to read as
13 13 follows:

13 14 22.13 SETTLEMENTS == ~~GOVERNMENTAL~~ GOVERNMENT BODIES.

13 15 1. A written summary of the terms of settlement, including
13 16 amounts of payments made to or through a claimant, or other
13 17 disposition of any claim for damages made against a
13 18 ~~governmental~~ government body or against an employee, officer,
13 19 or agent of a ~~governmental~~ government body, by an insurer
13 20 pursuant to a contract of liability insurance issued to the
13 21 ~~governmental~~ government body, shall be filed with the
13 22 ~~governmental~~ government body and shall be a public record.

13 23 2. A final binding settlement agreement between any
13 24 government body of this state or unit or official of such a
13 25 government body that resolves a legal dispute between such a
13 26 government body and another person or entity shall be filed
13 27 with the government body. For each such settlement agreement,
13 28 the government body shall prepare and file, together with the
13 29 settlement agreement, a brief summary indicating the identity
13 30 of the parties involved, the nature of the dispute, any
13 31 underlying relevant facts, and the terms of the settlement.
13 32 The settlement agreement and summary shall be available for
13 33 public inspection.

13 34 Sec. 25. Section 22.14, subsection 3, Code 2009, is
13 35 amended to read as follows:

14 1 3. If a fiduciary or other third party with custody of
14 2 public investment transactions records fails to produce public

14 3 records within a reasonable period of time as requested by the
14 4 ~~public government~~ body, the ~~public government~~ body shall make
14 5 no new investments with or through the fiduciary or other
14 6 third party and shall not renew existing investments upon
14 7 their maturity with or through the fiduciary or other third
14 8 party. The fiduciary or other third party shall be liable for
14 9 the penalties imposed under ~~section 22.6 statute, common law,~~
14 10 ~~or contract~~ due to the acts or omissions of the fiduciary or
14 11 other third party ~~and any other remedies available under~~
14 12 ~~statute, common law, or contract.~~

14 13 Sec. 26. NEW SECTION. 22.15 JUDICIAL BRANCH == RULES.

14 14 This chapter does not apply to government records owned,
14 15 created, possessed, or under the control of the judicial
14 16 branch related to the performance by the courts of their
14 17 judicial functions. The supreme court shall prescribe rules
14 18 governing access to such records consistent with the purposes
14 19 of this chapter.

14 20 Sec. 27. NEW SECTION. 23.1 CITATION AND PURPOSE.

14 21 This chapter may be cited as the "Iowa Public Information
14 22 Board Act". The purpose of this chapter is to provide an
14 23 alternative means by which to secure compliance with and
14 24 enforcement of the requirements of chapters 21 and 22 through
14 25 the provision by the Iowa public information board to all
14 26 interested parties of an efficient, informal, and
14 27 cost-effective process for resolving disputes.

14 28 Sec. 28. NEW SECTION. 23.2 DEFINITIONS.

14 29 1. "Board" means the Iowa public information board created
14 30 in section 23.3.

14 31 2. "Complainant" means a person who files a complaint with
14 32 the board.

14 33 3. "Complaint" means a written and signed document filed
14 34 with the board alleging a violation of chapter 21 or 22.

14 35 4. "Custodian" means a government body, government
15 1 official, or government employee designated as the lawful
15 2 custodian of a government record pursuant to section 22.1.

15 3 5. "Government body" means the same as defined in section
15 4 22.1.

15 5 6. "Person" means an individual, partnership, association,
15 6 corporation, legal representative, trustee, receiver,
15 7 custodian, government body, or official, employee, agency, or
15 8 political subdivision of this state.

15 9 7. "Respondent" means any agency or other unit of state or
15 10 local government, custodian, government official, or
15 11 government employee who is the subject of a complaint.

15 12 Sec. 29. NEW SECTION. 23.3 BOARD APPOINTED.

15 13 1. An Iowa public information board is created consisting
15 14 of five members appointed by the governor, subject to
15 15 confirmation by the senate. Membership shall be balanced as
15 16 to political affiliation as provided in section 69.16 and
15 17 gender as provided in section 69.16A. Members appointed to
15 18 the board shall serve staggered, four-year terms, beginning
15 19 and ending as provided by section 69.19. A quorum shall
15 20 consist of three members.

15 21 2. A vacancy on the board shall be filled by the governor
15 22 by appointment for the unexpired part of the term. A board
15 23 member may be removed from office by the governor for good
15 24 cause. The board shall select one of its members to serve as
15 25 chair and shall employ a director who shall serve as the
15 26 executive officer of the board.

15 27 Sec. 30. NEW SECTION. 23.4 COMPENSATION AND EXPENSES.

15 28 Board members shall be paid a per diem as specified in
15 29 section 7E.6 and shall be reimbursed for actual and necessary
15 30 expenses incurred while on official board business. Per diem
15 31 and expenses shall be paid from funds appropriated to the
15 32 board.

15 33 Sec. 31. NEW SECTION. 23.5 ELECTION OF REMEDIES.

15 34 1. An aggrieved person, any taxpayer or citizen of this
15 35 state, the attorney general, or any county attorney may seek
16 1 enforcement of the requirements of chapters 21 and 22 by
16 2 electing either to file an action pursuant to section 17A.19,
16 3 21.6, or 22.10, whichever is applicable, or in the
16 4 alternative, to file a timely complaint with the board.

16 5 2. If more than one person seeks enforcement of chapter 21
16 6 or 22 with respect to the same incident involving an alleged
16 7 violation, and one or more of such persons elects to do so by
16 8 filing an action under section 17A.19, 21.6, or 22.10 and one
16 9 or more of such persons elects to do so by filing a timely
16 10 complaint with the board, the court in which the action was
16 11 filed shall dismiss the action without prejudice, authorizing
16 12 the complainant to file a complaint with respect to the same
16 13 incident with the board without regard to the timeliness of

16 14 the filing of the complaint at the time the action in court is
16 15 dismissed.

16 16 3. If a person files an action pursuant to section 22.8
16 17 seeking to enjoin the inspection of a public record, the
16 18 respondent or person requesting access to the record which is
16 19 the subject of the request for injunction may remove the
16 20 proceeding to the board for its determination by filing,
16 21 within thirty days of the commencement of the judicial
16 22 proceeding, a complaint with the board alleging a violation of
16 23 chapter 22 in regard to the same matter.

16 24 Sec. 32. NEW SECTION. 23.6 BOARD POWERS AND DUTIES.

16 25 The board shall have all of the following powers and
16 26 duties:

16 27 1. Employ such employees as are necessary to execute its
16 28 authority, including administrative law judges, and attorneys
16 29 to prosecute respondents in proceedings before the board and
16 30 to represent the board in proceedings before a court.
16 31 Notwithstanding section 8A.412, all of the board's employees,
16 32 except for the executive director and attorneys, shall be
16 33 employed subject to the merit system provisions of chapter 8A,
16 34 subchapter IV.

16 35 2. Adopt rules with the force of law pursuant to chapter
17 1 17A calculated to implement, enforce, and interpret the
17 2 requirements of chapters 21 and 22 and to implement any
17 3 authority delegated to the board by this chapter.

17 4 3. Issue, consistent with the requirements of section
17 5 17A.9, declaratory orders with the force of law determining
17 6 the applicability of chapter 21 or 22 to specified fact
17 7 situations and issue informal advice to any person concerning
17 8 the applicability of chapters 21 and 22.

17 9 4. Receive complaints alleging violations of chapter 21 or
17 10 22, seek resolution of such complaints through informal
17 11 assistance or through mediation and settlement, formally
17 12 investigate such complaints, decide after such an
17 13 investigation whether there is probable cause to believe a
17 14 violation of chapter 21 or 22 has occurred, and if probable
17 15 cause has been found prosecute the respondent before the board
17 16 in a contested case proceeding conducted according to the
17 17 provisions of chapter 17A.

17 18 5. Request and receive from a government body assistance
17 19 and information as necessary in the performance of its duties.
17 20 The board may examine a record of a government body that is
17 21 the subject matter of a complaint, including any record that
17 22 is confidential by law. Confidential records provided to the
17 23 board by a governmental body shall continue to maintain their
17 24 confidential status. Any member or employee of the board is
17 25 subject to the same policies and penalties regarding the
17 26 confidentiality of the document as an employee of the
17 27 government body.

17 28 6. Issue subpoenas enforceable in court for the purpose of
17 29 investigating complaints and to facilitate the prosecution and
17 30 conduct of contested cases before the board.

17 31 7. After appropriate board proceedings, issue orders with
17 32 the force of law, determining whether there has been a
17 33 violation of chapter 21 or 22, requiring compliance with
17 34 specified provisions of those chapters, imposing civil
17 35 penalties equivalent to and to the same extent as those
18 1 provided for in section 21.6 or 22.10, as applicable, on a
18 2 respondent who has been found in violation of chapter 21 or
18 3 22, and imposing any other appropriate remedies calculated to
18 4 declare, terminate, or remediate any violation of those
18 5 chapters.

18 6 8. Represent itself in judicial proceedings to enforce or
18 7 defend its orders and rules through attorneys on its own
18 8 staff, through the office of the attorney general, or through
18 9 other attorneys retained by the board, at its option.

18 10 9. Make training opportunities available to lawful
18 11 custodians, government bodies, and other persons subject to
18 12 the requirements of chapters 21 and 22 and require, in its
18 13 discretion, appropriate persons who have responsibilities in
18 14 relation to chapters 21 and 22 to receive periodic training
18 15 approved by the board.

18 16 10. Disseminate information calculated to inform members
18 17 of the public about the public's right to access government
18 18 information in this state including procedures to facilitate
18 19 this access and including information relating to the
18 20 obligations of government bodies under chapter 21 and lawful
18 21 custodians under chapter 22 and other laws dealing with this
18 22 subject.

18 23 11. Prepare and transmit to the governor and to the
18 24 general assembly, at least annually, reports describing

18 25 complaints received, board proceedings, investigations,
18 26 hearings conducted, decisions rendered, and other work
18 27 performed by the board.

18 28 12. Make recommendations to the general assembly proposing
18 29 legislation relating to public access to government
18 30 information deemed desirable by the board in light of the
18 31 policy of this state to provide as much public access as
18 32 possible to government information as is consistent with the
18 33 public interest and the need to protect individuals against
18 34 undue invasions of personal privacy.

18 35 Sec. 33. NEW SECTION. 23.7 FILING OF COMPLAINTS WITH THE
19 1 BOARD.

19 2 1. The board shall adopt rules with the force of law and
19 3 pursuant to chapter 17A providing for the timing, form,
19 4 content, and means by which any aggrieved person, any taxpayer
19 5 to or citizen of this state, the attorney general, or any
19 6 county attorney may file a complaint with the board alleging a
19 7 violation of chapter 21 or 22. The complaint must be filed
19 8 within sixty days from the time the alleged violation occurred
19 9 or the complainant could have become aware of the violation
19 10 with reasonable diligence. All complaints filed with the
19 11 board shall be public records.

19 12 2. All board proceedings in response to the filing of a
19 13 complaint shall be conducted as expeditiously as possible.

19 14 3. The board shall not charge a complainant any fee in
19 15 relation to the filing of a complaint, the processing of a
19 16 complaint, or any board proceeding or judicial proceeding
19 17 resulting from the filing of a complaint.

19 18 Sec. 34. NEW SECTION. 23.8 INITIAL PROCESSING OF
19 19 COMPLAINT.

19 20 Upon receipt of a complaint alleging a violation of chapter
19 21 21 or 22, the board shall do either of the following:

19 22 1. Determine that, on its face, the complaint is within
19 23 the board's jurisdiction, appears legally sufficient, and
19 24 could have merit. In such a case the board shall accept the
19 25 complaint, and shall notify the parties of that fact in
19 26 writing.

19 27 2. Determine that, on its face, the complaint is outside
19 28 its jurisdiction, is legally insufficient, is frivolous, is
19 29 without merit, involves harmless error, or relates to a
19 30 specific incident that has previously been finally disposed of
19 31 on its merits by the board or a court. In such a case the
19 32 board shall decline to accept the complaint. If the board
19 33 refuses to accept a complaint, the board shall provide the
19 34 complainant with a written order explaining its reasons for
19 35 the action.

20 1 Sec. 35. NEW SECTION. 23.9 INFORMAL ASSISTANCE ==
20 2 MEDIATION AND SETTLEMENT.

20 3 1. After accepting a complaint, the board shall promptly
20 4 work with the parties through its employees to reach an
20 5 informal, expeditious resolution of the complaint. If an
20 6 informal resolution satisfactory to the parties cannot be
20 7 reached, the board or the board's designee shall offer the
20 8 parties an opportunity to resolve the dispute through
20 9 mediation and settlement.

20 10 2. The mediation and settlement process shall enable the
20 11 complainant to attempt to resolve the dispute with the aid of
20 12 a neutral mediator employed and selected by the board, in its
20 13 discretion, from either its own staff or an outside source.

20 14 3. Mediation shall be conducted as an informal,
20 15 nonadversarial process and in a manner calculated to help the
20 16 parties reach a mutually acceptable and voluntary settlement
20 17 agreement. The mediator shall assist the parties in
20 18 identifying issues and shall foster joint problem solving and
20 19 the exploration of settlement alternatives.

20 20 Sec. 36. NEW SECTION. 23.10 ENFORCEMENT.

20 21 1. If any party declines mediation or settlement or if
20 22 mediation or settlement fails to resolve the matter to the
20 23 satisfaction of all parties, the board shall initiate a formal
20 24 investigation concerning the facts and circumstances set forth
20 25 in the complaint. The board shall, after an appropriate
20 26 investigation, make a determination as to whether the
20 27 complaint is within the board's jurisdiction and whether there
20 28 is probable cause to believe that the facts and circumstances
20 29 alleged in the complaint constitute a violation of chapter 21
20 30 or 22.

20 31 2. If the board finds the complaint is outside the board's
20 32 jurisdiction or there is no probable cause to believe there
20 33 has been a violation of chapter 21 or 22, the board shall
20 34 issue a written order explaining the reasons for the board's
20 35 conclusions and dismissing the complaint, and shall transmit a

21 1 copy to the complainant and to the party against whom the
21 2 complaint was filed.
21 3 3. a. If the board finds the complaint is within the
21 4 board's jurisdiction and there is probable cause to believe
21 5 there has been a violation of chapter 21 or 22, the board
21 6 shall issue a written order to that effect and shall commence
21 7 a contested case proceeding under chapter 17A against the
21 8 respondent. An attorney selected by the director of the board
21 9 shall prosecute the respondent in the contested case
21 10 proceeding. At the termination of the contested case
21 11 proceeding the board shall, by a majority vote of its members,
21 12 render a final decision as to the merits of the complaint. If
21 13 the board finds that the complaint has merit, the board may
21 14 issue any appropriate order to ensure enforcement of chapter
21 15 21 or 22 including but not limited to an order requiring
21 16 specified action or prohibiting specified action and any
21 17 appropriate order to remedy any failure of the respondent to
21 18 observe any provision of those chapters.

21 19 b. If the board determines, by a majority vote of its
21 20 members, that the respondent has violated chapter 21 or 22,
21 21 the board may also do any or all of the following:
21 22 (1) Require the respondent to pay damages as provided for
21 23 in section 21.6 or 22.10, whichever is applicable, to the
21 24 extent that provision would make such damages payable if the
21 25 complainant had sought to enforce a violation in court instead
21 26 of through the board.
21 27 (2) Void any action taken in violation of chapter 21 if a
21 28 court would be authorized to do so in similar circumstances
21 29 pursuant to section 21.6.

21 30 c. The board shall not have the authority to remove a
21 31 person from public office for a violation of chapter 21 or 22.
21 32 The board may file an action under chapter 21 or 22 to remove
21 33 a person from office for violations that would subject a
21 34 person to removal under those chapters.

21 35 d. A final board order resulting from such proceedings may
22 1 be enforced by the board in court and is subject to judicial
22 2 review pursuant to section 17A.19.

22 3 Sec. 37. NEW SECTION. 23.11 DEFENSES IN A CONTESTED CASE
22 4 PROCEEDING.

22 5 A respondent may defend against a proceeding before the
22 6 board charging a violation of chapter 21 or 22 on the ground
22 7 that if such a violation occurred it was only harmless error
22 8 or that clear and convincing evidence demonstrated that
22 9 grounds existed to justify a court to issue an injunction
22 10 against disclosure pursuant to section 22.8.

22 11 Sec. 38. NEW SECTION. 23.12 JURISDICTION.

22 12 The board shall not have jurisdiction over the judicial or
22 13 legislative branches of state government or any entity,
22 14 officer, or employee of those branches, or over the governor
22 15 or the office of the governor.

22 16 Sec. 39. Section 455K.4, subsection 4, Code 2009, is
22 17 amended to read as follows:

22 18 4. Information that is disclosed under subsection 2,
22 19 paragraph "b", is confidential and is not subject to
22 20 disclosure under chapter 22. ~~A governmental entity,
22 21 governmental employee, or governmental official who discloses
22 22 information in violation of this subsection is subject to the
22 23 penalty provided in section 22.6.~~

22 24 Sec. 40. Section 22.6, Code 2009, is repealed.

22 25 Sec. 41. IOWA PUBLIC INFORMATION BOARD == TRANSITION
22 26 PROVISIONS.

22 27 1. The initial members of the Iowa public information
22 28 board established pursuant to this Act shall be appointed by
22 29 September 1, 2009.

22 30 2. Notwithstanding any provision of this Act to the
22 31 contrary, the director of the board and employees of the board
22 32 shall not be hired prior to July 1, 2010.

22 33 3. Prior to July 1, 2010, the board shall submit a report
22 34 to the governor and the general assembly. The report shall
22 35 include a job description for the executive director of the
23 1 board, goals for board operations, and performance measures to
23 2 measure achievement of the board's goals.

23 3 Sec. 42. APPROPRIATION == IOWA PUBLIC INFORMATION BOARD.

23 4 There is appropriated from the general fund of the state to
23 5 the department of management for the fiscal year beginning
23 6 July 1, 2009, and ending June 30, 2010, the following amount,
23 7 or so much thereof as is necessary, to be used for the
23 8 following purpose:

23 9 For the initial expenses of the Iowa public information
23 10 board as established in this Act:

23 11 \$ 6,000

23 12 Sec. 43. EFFECTIVE DATE. Except for the sections of this
23 13 Act establishing transition provisions for the Iowa public
23 14 information board and making an appropriation for the initial
23 15 expenses of the Iowa public information board, this Act takes
23 16 effect July 1, 2010.

23 17 EXPLANATION

23 18 This bill relates to Iowa's Open Meetings Law (Code chapter
23 19 21) and Iowa's Open Records Law (Code chapter 22) and creates
23 20 the Iowa public information board.

23 21 MEETINGS. The bill provides that except as otherwise
23 22 provided, a reconvened meeting of a governmental body is also
23 23 subject to the meeting notice requirements pursuant to Code
23 24 section 21.4. This requirement does not apply to a meeting of
23 25 a governmental body that is reconvened within four hours of
23 26 the start of its recess, where an announcement of the time,
23 27 date, and place of the reconvened meeting is made at the
23 28 original meeting in open session and recorded in the minutes
23 29 of the meeting and there is no change in the agenda. The
23 30 notice requirement also does not apply to a meeting held by a
23 31 formally constituted subunit of a parent governmental body
23 32 during a lawful meeting of the parent governmental body or
23 33 during a recess in that meeting of up to four hours, or a
23 34 meeting of that subunit immediately following the meeting of
23 35 the parent governmental body, if the meeting of the subunit is
24 1 publicly announced in open session at the parent meeting and
24 2 the subject of the meeting reasonably coincides with the
24 3 subjects discussed or acted upon by the parent governmental
24 4 body. The bill also changes all references relating to "tape"
24 5 recordings of closed meetings to "audio" recordings.

24 6 CIVIL AND CRIMINAL PENALTY PROVISIONS. The bill increases
24 7 the civil penalty damage amounts for violations of the open
24 8 meetings and public records laws for each member of the
24 9 governmental body or each person who knowingly participated in
24 10 the violation from not less than \$100 and not more than \$500
24 11 to not less than \$1,000 and not more than \$2,500 subject to
24 12 the existing defenses contained in Code sections 21.6 and
24 13 22.10. The bill retains the current civil penalty damage
24 14 amounts for such violations for each member of the
24 15 governmental body or each person who participated in the
24 16 violation (\$100 to \$500).

24 17 The bill repeals the criminal penalty provision for knowing
24 18 violations or attempts to violate any provisions of the public
24 19 records law.

24 20 OPEN RECORDS == CHAPTER PURPOSE. The bill provides a
24 21 purpose provision in the open records chapter. The bill
24 22 provides the purpose of the open records law is to provide as
24 23 much transparency in government operations as possible
24 24 consistent with the need to avoid undue invasions of personal
24 25 privacy.

24 26 RECORDS REQUESTS == TIME LIMITS. The bill provides that
24 27 upon receipt of an oral or written request to examine or copy
24 28 a public record, the lawful custodian shall, if feasible in
24 29 the ordinary course of business, permit such examination or
24 30 copying at the time of the request. If it is not feasible in
24 31 the ordinary course of business to permit examination or
24 32 copying of the public record at the time of the request, the
24 33 lawful custodian shall immediately notify the requester,
24 34 orally or in writing, when such examination or copying may
24 35 take place which shall be no later than five business days
25 1 from the time of the request unless there is good cause for
25 2 further delay. If further delay is necessary because of good
25 3 cause, the lawful custodian shall provide the requester with a
25 4 written statement detailing the reason or reasons for the
25 5 delay and the date by which the request will be satisfied. If
25 6 the lawful custodian is in doubt as to whether the record
25 7 requested is a public record or whether the requester should
25 8 be permitted to examine or copy a record specified in Code
25 9 section 22.7, the lawful custodian shall make that
25 10 determination within 10 business days from the date of the
25 11 request unless further delay is necessary. Examination or
25 12 copying of the record shall be allowed within five business
25 13 days from the date the lawful custodian makes the decision to
25 14 permit examination or copying of the record unless there is
25 15 good cause for further delay in fulfilling the request. If
25 16 the lawful custodian denies a request to examine or copy a
25 17 record, the custodian must provide the requester at the time
25 18 of the denial a written statement denying the request and
25 19 detailing the specific reason or reasons for the denial. If
25 20 the lawful custodian does not fulfill a request to examine or
25 21 copy a public record within the time frames prescribed, the
25 22 request shall be deemed denied and the requester shall be

25 23 entitled to file a complaint with the Iowa public information
25 24 board created in Code section 23.7 or may file a lawsuit
25 25 against the lawful custodian pursuant to Code section 22.10.
25 26 APPRAISAL INFORMATION. Current law provides that appraisal
25 27 or appraisal information concerning the purchase of real or
25 28 personal property for public purposes, prior to public
25 29 announcement of a project, shall be confidential. The bill
25 30 amends this law to provide that such information shall remain
25 31 confidential prior to the submission of the appraisal to the
25 32 property owner or other interest holders as provided in Code
25 33 section 6B.45.

25 34 PERSONAL INFORMATION IN CONFIDENTIAL PERSONNEL RECORDS.
25 35 Current law provides that personal information in confidential
26 1 personnel records of government bodies shall be confidential,
26 2 unless otherwise ordered by a court, by the lawful custodian,
26 3 or by another duly authorized person to release such
26 4 information. The bill specifies that the name and
26 5 compensation of the individual, the date the individual was
26 6 employed by the government body, the positions the individual
26 7 holds or has held with the government body, the individual's
26 8 qualifications for the position that the individual holds or
26 9 has held including but not limited to educational background
26 10 and work experience, and any final disciplinary action taken
26 11 against the individual that resulted in the individual's
26 12 discharge shall be public records.

26 13 PUBLIC EMPLOYMENT APPLICATIONS. The bill provides that
26 14 identity and qualifications of an applicant for employment by
26 15 a government body if the applicant requests anonymity in
26 16 writing and the government body determines that anonymity is
26 17 necessary to induce the applicant to apply for the public
26 18 employment position shall be confidential unless otherwise
26 19 ordered by a court, by the lawful custodian, or by another
26 20 duly authorized person. Such information shall be exempt from
26 21 disclosure until an applicant is considered by the government
26 22 body to be a finalist for a position in public employment.
26 23 "Finalist" means a person who is one of five or fewer
26 24 applicants under final consideration for a public employment
26 25 position. If there are five or fewer applicants for the
26 26 particular position, all of the applicants shall be considered
26 27 finalists. The identities and qualifications of the finalists
26 28 shall be made available for public inspection at least three
26 29 business days prior to the final decision. Documents relating
26 30 to a government body's evaluation of the qualifications and
26 31 merits of an applicant for employment by a government body are
26 32 also confidential records unless otherwise released by the
26 33 appropriate person.

26 34 SETTLEMENT AGREEMENTS. Code chapter 22 currently provides
26 35 that a written summary of the terms of settlement or other
27 1 disposition of any claim for damages made against any
27 2 government body or against an employee, officer, or agent of a
27 3 government body, by an insurer pursuant to a contract of
27 4 liability insurance issued to the government body, shall be
27 5 filed with the government body and shall be a public record.
27 6 The bill provides that all final binding settlement agreements
27 7 between any government body of this state or other unit or
27 8 official of such a government body that resolves a legal
27 9 dispute between such a government body and another person or
27 10 entity shall be filed with the government body together with a
27 11 brief summary indicating the identity of the parties involved,
27 12 the nature of the dispute, any underlying relevant facts, and
27 13 the terms of the settlement. The settlement agreement and
27 14 summary shall be available for public inspection.

27 15 TAX-EXEMPT BONDING AUTHORITY == 7C == MEETINGS AND RECORDS.
27 16 The bill provides that an entity eligible to exercise
27 17 tax-exempt bonding authority under Code chapter 7C designated
27 18 by the state to serve as a secondary market for student loans
27 19 and a nonprofit tax-exempt bonding authority under chapter 7C
27 20 whose board of directors is appointed by the governor is
27 21 subject to the provisions of the open meetings and open
27 22 records laws.

27 23 JUDICIAL BRANCH == RULES. The bill provides that Code
27 24 chapter 22 does not apply to government records owned,
27 25 created, possessed, or under the control of the judicial
27 26 branch related to the performance by the courts of their
27 27 judicial functions. The bill provides the supreme court shall
27 28 prescribe rules governing access to such records consistent
27 29 with the purposes of Code chapter 22.

27 30 IOWA PUBLIC INFORMATION BOARD. The bill creates the Iowa
27 31 public information board to provide an alternative means by
27 32 which to secure compliance with and enforcement of the
27 33 requirements of Code chapters 21 and 22, to consist of five

27 34 members appointed by the governor, subject to confirmation by
27 35 the senate, to serve four-year staggered terms. The board
28 1 shall be balanced as to political affiliation and gender.
28 2 Vacancies on the board shall be filled by the governor by
28 3 appointment for the unexpired part of the term of the vacancy.
28 4 Any board member may be removed from office by the governor
28 5 for good cause. The board shall select one of its members to
28 6 serve as chair and shall hire a director who shall serve as
28 7 the executive officer of the board. Board members shall be
28 8 paid a per diem and shall be reimbursed for actual and
28 9 necessary expenses incurred while on official board business.
28 10 All per diem and expense moneys paid to board members shall be
28 11 paid from funds appropriated to the board. The board shall
28 12 not have jurisdiction over the judicial or legislative
28 13 branches of state government or any entity, officer, or
28 14 employee of those branches, or over the governor or the office
28 15 of the governor, but the bill does not alter the current
28 16 applicability of Code chapter 22 and the enforcement
28 17 mechanisms provided in Code chapter 22 to any of those bodies.
28 18 The bill provides that any aggrieved person, any taxpayer
28 19 to or citizen of the state of Iowa, the attorney general, or
28 20 any county attorney, may seek enforcement of the requirements
28 21 of Code chapters 21 and 22 by electing either to file an
28 22 action pursuant to Code section 17A.19, 21.6, or 22.9,
28 23 whichever is applicable, or in the alternative, to file a
28 24 timely complaint with the board. If more than one person
28 25 seeks enforcement of Code chapter 21 or 22 with respect to the
28 26 same incident involving an alleged violation, and one or more
28 27 of such persons elects to do so by filing an action under Code
28 28 section 17A.19, 21.6, or 22.9, and one or more of such persons
28 29 elects to do so by filing a timely complaint with the board,
28 30 the court in which the action was filed shall dismiss the
28 31 action without prejudice authorizing the complainant to file a
28 32 complaint with respect to that same incident with the board
28 33 without regard to the timeliness of the filing of that
28 34 complaint at the time the action in court is dismissed. If a
28 35 person files an action seeking to enjoin the inspection of a
29 1 public record, the respondent or person requesting access to
29 2 the record which is the subject of the request for injunction,
29 3 may remove the proceeding to the board for its determination
29 4 by filing, within 30 days of the commencement of that judicial
29 5 proceeding, a complaint with the board alleging a violation of
29 6 Code chapter 22 in regard to the same matter.
29 7 The bill provides that the board shall have the authority
29 8 to employ such employees as are necessary to execute its
29 9 authority, adopt rules with the force of law, interpret the
29 10 requirements of Code chapters 21 and 22, implement any
29 11 authority delegated to the board, issue declaratory orders
29 12 with the force of law, issue informal advice to anyone
29 13 concerning the applicability of Code chapters 21 and 22,
29 14 receive complaints alleging violations of Code chapter 21 or
29 15 22, seek resolution of such complaints through mediation and
29 16 settlement, formally investigate such complaints, decide after
29 17 such an investigation whether there is probable cause to
29 18 believe a violation of Code chapter 21 or 22 has occurred, and
29 19 if probable cause has been found, prosecute the respondent
29 20 before the board in a contested case proceeding conducted
29 21 according to the provisions of Code chapter 17A. The board
29 22 shall also have the authority to issue subpoenas enforceable
29 23 in court, issue orders with the force of law, represent itself
29 24 in judicial proceedings, make training opportunities
29 25 available, disseminate information to inform the public about
29 26 the public's right to access government information, prepare
29 27 and transmit reports to the governor and the general assembly,
29 28 at least annually, describing complaints received, board
29 29 proceedings, investigations, hearings conducted, decisions
29 30 rendered, and other work performed by the board, and make
29 31 recommendations to the general assembly concerning legislation
29 32 relating to public information access.
29 33 The bill provides that a complaint must be filed within 60
29 34 days from the time the alleged violation occurred or the
29 35 complainant could have become aware of the violation with
30 1 reasonable diligence. All complaints filed with the board
30 2 shall be public records. The board shall not charge a
30 3 complainant any fee in relation to the filing of a complaint,
30 4 the processing of a complaint, or any board proceeding or
30 5 judicial proceeding resulting from the filing of a complaint.
30 6 The bill provides that upon receipt of a complaint, the
30 7 board shall either make a determination that, on its face, the
30 8 complaint is within the board's jurisdiction, appears legally
30 9 sufficient, and could have merit, in which case the board

30 10 shall accept the complaint, or make a determination that, on
30 11 its face, the complaint is outside the board's jurisdiction,
30 12 is legally insufficient, is frivolous, is without merit,
30 13 involves harmless error, or relates to a specific incident
30 14 that has previously been finally disposed of on its merits by
30 15 the board or a court, in which case the board shall decline to
30 16 accept the complaint. If the board declines to accept the
30 17 complaint, the board shall provide the complainant with a
30 18 written statement detailing the reasons for the denial.

30 19 After accepting a complaint, and upon the board's
30 20 determination that the matter is unlikely to be resolved with
30 21 the prompt informal assistance of a board employee, the board
30 22 shall offer the parties the opportunity to resolve the dispute
30 23 through mediation and settlement which shall provide the
30 24 complainant the opportunity to resolve the dispute with the
30 25 aid of a neutral mediator employed and selected by the board.

30 26 If any party declines mediation or settlement or if
30 27 mediation or settlement fails to resolve the matter to the
30 28 satisfaction of all parties, the board shall initiate a formal
30 29 investigation concerning the facts and circumstances set forth
30 30 in the complaint. After investigation, the board shall make a
30 31 determination as to whether the complaint is within the
30 32 board's jurisdiction and whether there is probable cause to
30 33 believe that the complaint states a violation of Code chapter
30 34 21 or 22 and if the board finds the complaint is outside the
30 35 board's jurisdiction or there is not probable cause to believe
31 1 there has been a violation, the board shall issue a written
31 2 order explaining the reasons for the board's conclusions and
31 3 dismissing the complaint. If the board finds the complaint is
31 4 within the board's jurisdiction and there is probable cause to
31 5 believe there has been a violation, the board shall issue a
31 6 written order to that effect and shall commence a contested
31 7 case proceeding against the respondent. An attorney selected
31 8 by the director of the board shall prosecute the respondent in
31 9 the contested case proceeding. At the termination of the
31 10 contested case proceeding the board shall, by a majority vote
31 11 of its members, render a final decision as to the merits of
31 12 the complaint and issue any appropriate order to ensure
31 13 enforcement of Code chapter 21 or 22 or to remedy any failure
31 14 of the respondent to observe any provision of those Code
31 15 chapters. If the board determines, by a majority vote of its
31 16 members, that the respondent has violated Code chapter 21 or
31 17 22, the board may also require the respondent to pay damages
31 18 if such damages would be warranted under either Code chapter
31 19 and may void any action taken in violation of Code chapter 21.
31 20 The board does not have the authority to remove a person from
31 21 public office for a violation of Code chapter 21 or 22 but may
31 22 file an action under either Code chapter to remove a person
31 23 from office for violations that would subject a person to
31 24 removal under those Code chapters. A final board order
31 25 resulting from such proceedings may be enforced by the board
31 26 in court and is subject to judicial review pursuant to Code
31 27 section 17A.19.

31 28 A respondent may defend against a proceeding before the
31 29 board charging a violation of Code chapter 21 or 22 on the
31 30 ground that if such a violation occurred it was only harmless
31 31 error or that clear and convincing evidence demonstrated that
31 32 grounds existed to justify a court to issue an injunction
31 33 against disclosure.

31 34 The bill provides that the initial members of the board
31 35 shall be appointed by September 1, 2009, the director and
32 1 employees of the board shall not be hired prior to July 1,
32 2 2010, and the board shall submit a report to include a job
32 3 description for the executive director of the board, goals for
32 4 board operations, and performance measures for the board prior
32 5 to July 1, 2010.

32 6 The bill makes an appropriation of \$6,000 from the general
32 7 fund of the state to the department of management for the
32 8 2009=2010 fiscal year for the initial expenses of the board.

32 9 EFFECTIVE DATE. Except as otherwise provided, the bill
32 10 takes effect July 1, 2010.

32 11 LSB 2139HV 83

32 12 rh/rj/14